

that the second respondent had contributed to the development of the land, the presumption arose that it was *harta sapencharian*. This presumption had not been rebutted. The commissioner however decided to exclude the second respondent from any share therein for reasons set out in his judgment. I quote:—

"During the period of the appellant and the respondent living as husband and wife the respondent did not at any time ask the appellant as to the ownership of the land when it was first alienated to the appellant nor did the respondent ask the appellant as to whether by assisting the appellant in planting rubber on the land should be jointly held by them as registered co-proprietors of the land.

The question in issue in this case is that whether a wife by doing something for or giving assistance voluntarily to a husband is entitled to a share of the land. It is my conviction that it is customary for a wife to assist a husband in the hope that they can settle down peacefully during their stay as wife and husband not of course in expectation of something to be given to the wife when divorced except matters governed by the religious principles."

The fact that:—

- (i) the second respondent never questioned the appellant about the ownership of the land;
- (ii) she did not ask him if she would be entitled to a share therein by helping in developing the land;
- (iii) she only voluntarily assisted in cultivating the land,

is irrelevant to a claim by the second respondent for a share in the *harta sapencharian*. The point of importance is whether the land was acquired during coverture and if the second respondent assisted in working it. These facts the commissioner found in favour of the second respondent. In denying her her right to her share in the *harta sapencharian* for the reasons given above, the commissioner had acted on a principle unknown to the law and had therefore fallen into error in point of law. In the case of *R. v. Northumberland Compensation Appeal Tribunal*, Denning L.J. said at page 131:—

"If the tribunal does state its reasons, and those reasons are wrong in law, *certiorari* lies to quash the decision".

The appeal is dismissed with costs here and in the court below.

Azmi C.J. (Malaya): I have had the advantage of reading the judgment of my brother Ismail Khan J. in the above appeal and I am in entire agreement with it.

MacIntyre J.: I have had the advantage of reading the judgment of my learned brother Ismail Khan J. in the above appeal and I am in entire agreement with it.

Appeal dismissed.

Solicitors: *Dato' Bijaya & Co.; Wilson & Co.*

A WONG SIN YEOW v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Suleiman J.) February 13, 1968]
[Kota Bharu—Criminal Appeal No. 19 of 1967]

Criminal Procedure — Plea of guilty by unrepresented accused — When plea may be withdrawn — Court when functus officio — Judicial discretion.

B The appellant was charged with the offence of house-breaking by night. He pleaded guilty and was convicted for the offence, but sentence was deferred at the request of the prosecution. When the appellant later appeared for sentence, he was represented by counsel who informed the court that his client wished to withdraw the plea of guilty. The magistrate refused to permit the plea to be withdrawn and the appellant was accordingly sentenced.

C Held, dismissing the appeal: (1) the magistrate was *functus officio* after having recorded a conviction against the appellant and therefore he could not permit the plea of guilty to be withdrawn;

(2) alternatively even if the magistrate was not *functus officio* the discretion rested in a magistrate to allow an accused person to withdraw his plea of guilty should be exercised judicially and for valid reasons. In this case the fact that the accused was unrepresented by counsel or that it was not stated in the statement of facts made by the prosecuting officer that the complainant could or could not identify the appellant could not detract from the validity of his plea of guilty.

Cases referred to:—

- (1) *Public Prosecutor v. How Kim Kok* [1940] M.L.J. 16, distinguished.
- (2) *Public Prosecutor v. Yusoff* [1964] M.L.J. 264.
- (3) *Yeo Sim Huat v. Public Prosecutor* [1961] M.L.J. 328.
- (4) *Abdul Mormin v. Public Prosecutor* [1939] M.L.J. 323.
- (5) *Public Prosecutor v. Sam Kim Kai* [1960] M.L.J. 265.

F CRIMINAL APPEAL.

A. Wilson for the appellant.

Wan Ismail (Deputy Public Prosecutor) for the respondent.

G Wan Suleiman J.: The appellant was charged with the offence of house breaking by night, the charge being as follows:—

H "That you on 26.12.66 at about 1.00 a.m. at house No. 3654, Jalan To'Hakim, Kota Bahru, in the District of Kota Bahru, in the State of Kelantan, committed house breaking by night, to wit by entering the said dwelling house of one Mr. Lye Tong Meng, and that you have thereby committed an offence punishable under section 456 of the Penal Code."

I When the case came up for hearing on 15th April 1967, the appellant on being charged pleaded guilty. There is a note by the learned magistrate to the effect that the appellant understood the nature and consequences of his plea and intended to admit without qualification the offence which he had been charged. It would not be unreasonable to conclude therefore that the learned magistrate had satisfied himself that there was no doubt on that score.

There then followed the usual narration of the facts of the case by the prosecuting officer which is to the following effect:—

"On 26.12.66 at about 1.00 a.m. at No. 3654 Jalan To'Hakim at dispensary of Dr. Lye Tong Meng accused broke into the said dispensary by entering through a window of the second floor of the building. Dr. Lye who was awakened by the noise managed to catch the accused but accused struggled and escaped through the same window. Subsequently on 13.4.67 accused was arrested by the police (DPC 10444). No property was missing from the building. Dr. Lye made the report the same day of incident *vide* K. Bahru Report No. 2873/66."

The appellant admitted the truth of these facts, the plea of guilty was then accepted and he was convicted. Sentence was deferred at the request of the prosecuting officer "pending finger prints."

When the appellant appeared for sentence on 29th April, 1967, he had retained counsel who said that accused wished to withdraw his plea on the ground that he had not been identified by the complainant, Dr. Lye, as the person who had entered his dispensary. Counsel also added that the accused had been arrested somewhere else, and that unless he could be identified by Dr. Lye he should not have been convicted. He also pointed out that the appellant was unrepresented on the day his plea was recorded and had therefore no opportunity to obtain legal advice.

The learned magistrate declined to permit the appellant to withdraw his plea and after noting down his record of previous convictions, which the appellant admitted, sentenced him to three months imprisonment.

Mr. Wilson for the appellant referred to the case of *Public Prosecutor v. How Kim Kok* ⁽¹⁾ to support the proposition that an unrepresented accused person who had earlier pleaded guilty should be allowed to withdraw such plea should he choose to do so later. However, the facts in that case are completely different from the present one. That decision depended on question of law and the interpretation of Sanitary Board by-laws, so that in exercising his discretion in allowing the accused to withdraw his plea, the magistrate was exercising it correctly. In the present appeal, all that the appellant had to consider before making his plea, was a simple question of fact, i.e., whether he had entered a particular dwelling house or not on the date and time mentioned in the charge.

In the next authority cited by counsel, *Public Prosecutor v. Yusoff*, ⁽²⁾ the appeal was allowed because the lower court, in that case, had convicted accused on what was in fact a qualified plea. Another case cited that of *Yeo Sim Huat v. Public Prosecutor*, ⁽³⁾ also concerns an unrepresented accused person whose qualified plea was wrongly treated as an unequivocal plea of guilty and therefore cannot apply to the facts of the present appeal.

It was held in *Abdul Mormin v. Public Prosecutor* ⁽⁴⁾ that until a court is *functus officio* it can in a proper case reject a plea of guilty which it may have accepted, and that it is within the

A discretion of the court whether or not to allow such a plea to be withdrawn, which discretion must be exercised judicially. I am inclined to the view that in this appeal, having recorded a conviction against the appellant, the learned magistrate was *functus officio* and cannot therefore permit the plea to be withdrawn.

B In any case, even if he had not been *functus officio*, this discretion, to cite the words of Rigby J. in *Public Prosecutor v. Sam Kim Kai* ⁽⁵⁾ (and it should be noted that in his Lordship's view, this discretion exists *before* sentence), "requires to be exercised judicially and for valid reasons. An accused person cannot be permitted merely at whim to change his plea, except upon valid and sufficient grounds which satisfy the magistrate that it is proper in the interests of justice that he should be allowed to do so."

C In this particular appeal, the charge of housebreaking by night is in no way difficult to understand. There can be no doubt whatsoever that the appellant understood the facts as stated before the learned magistrate on 15th April, 1967, and that he made an unequivocal plea of guilty. The fact that he was unrepresented by counsel, or that it was not stated in the statement of facts made by the prosecuting officer that the complainant could or could not identify the appellant cannot in my view detract from the validity of this plea.

The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: Wilson & Co.

ENG LYE HUP CO. LTD. v. CHUA SAI CHOO & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Ambrose J.) February 16, 1968]

G [Singapore — Federal Court Civil Appeal No. Y. 41 of 1967]

Master and Servant — Liability of master — Mason falling off a ladder — Work entailing climbing up and down ladders — Whether danger reasonably foreseeable.

H The appellants were the employers of the deceased, on behalf of whose estate the respondents, as administratrix and co-administrator, claimed damages for the death of the deceased in an accident allegedly caused by the negligence of the appellants. The deceased was a mason, having been employed as such by the appellants for over two years. His work entailed climbing up and down ladders. The appellants were at all material times general contractors, and at the time of the accident were engaged in erecting and constructing an electricity sub-station at Toa Payoh. The deceased's duties included, *inter alia*, the erecting and constructing of brick walls of the electricity sub-station. On the day of the accident, as was his usual practice, the deceased was climbing down the ladder when he fell. The learned trial judge made no positive finding as to the cause of the deceased's fall from the ladder in question, nevertheless held that in the circumstances the possibility of the ladder slipping while in use was always present and it could have been